



Reprinted  
February 24, 2009

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## HOUSE BILL No. 1448

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DIGEST OF HB 1448 (Updated February 23, 2009 6:30 pm - DI 102)

**Citations Affected:** IC 6-3; IC 6-8; noncode.

**Synopsis:** Indiana long term care savings plan. Establishes a long term care savings plan (plan) for a participant to fund an account to pay eligible long term care expenses of the participant. Establishes a board of directors (board) to develop and implement the plan. Designates the treasurer of state as the board chair. Authorizes the board to: (1) administer the plan; (2) enter into agreements with financial institutions to receive participant contributions in the form of account deposits; or (3) do both. Limits plan contributions to \$165,000 during a participant's lifetime. Indexes the limitation for inflation. Provides a state income tax deduction of \$1,000 for an individual and \$2,000 for a joint return for contributions to the plan in a taxable year. Provides that qualified withdrawals from the plan to pay eligible long term care expenses are exempt from state income tax, and nonqualified withdrawals are subject to a 10% penalty and state income tax on the amount withdrawn. Establishes a long term care savings plan trust (trust) administered and managed by the board to invest participants' contributions to the plan. Provides that the plan and trust are not obligations of the state.

**Effective:** July 1, 2009.

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**Welch, Turner, Blanton, Frizzell**

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January 13, 2009, read first time and referred to Committee on Ways and Means.  
February 19, 2009, amended, reported — Do Pass.  
February 23, 2009, read second time, amended, ordered engrossed.

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HB 1448—LS 7350/DI 102+



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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

## HOUSE BILL No. 1448

A BILL FOR AN ACT to amend the Indiana Code concerning  
taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-3-2-22 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2009]: **Sec. 22. (a) As used in this section, "account" means an**  
4 **account established for a participant in the Indiana long term care**  
5 **savings plan trust under IC 6-8-13-21(e).**

6       **(b) As used in this section, "eligible long term care expense" has**  
7 **the meaning set forth in IC 6-8-13-2.**

8       **(c) As used in this section, "nonqualified withdrawal" means a**  
9 **withdrawal or distribution from an account that is not a qualified**  
10 **withdrawal.**

11       **(d) As used in this section, "participant" has the meaning set**  
12 **forth in IC 6-8-13-6.**

13       **(e) As used in this section, "qualified withdrawal" means a**  
14 **withdrawal or distribution from an account that is made:**

15           **(1) to pay for eligible long term care expenses, excluding any**  
16 **withdrawals or distributions used to pay for eligible long term**  
17 **care expenses if the withdrawals or distributions are made**

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from an account that is terminated less than twelve (12) months after the account is opened;

(2) as a result of the death or disability of the participant; or  
(3) to transfer a participant's account to the participant's spouse.

(f) Each taxable year, a participant who makes a contribution to an account may deduct from the individual's adjusted gross income (as defined in IC 6-3-1-3.5(a)) the lesser of:

(1) the amount of the contribution made by the participant during the taxable year; or  
(2) one thousand dollars (\$1,000).

(g) Notwithstanding subsection (f), a husband and wife filing a joint adjusted income tax return for a particular taxable year may not claim a deduction under this section of more than two thousand dollars (\$2,000).

(h) The following are exempt from the adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7:

(1) A qualified withdrawal from an account.  
(2) Earnings from a participant's contributions that are credited to a participant.

(i) A nonqualified withdrawal from an account is subject to a ten percent (10%) penalty and payment of adjusted gross income tax imposed by IC 6-3-1 through IC 6-3-7 on the amount of the withdrawal. A payment under this subsection shall be reported by the participant on the participant's annual state income tax return for any taxable year in which a nonqualified withdrawal is made.

(j) A nonresident participant who is not required to file an annual income tax return for a taxable year in which a nonqualified withdrawal is made shall make any required payment on the form required under IC 6-3-4-1(2). If the nonresident participant does not make the required payment, the department shall issue a demand notice in accordance with IC 6-8.1-8-2.

SECTION 2. IC 6-8-13 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]:

### **Chapter 13. Indiana Long Term Care Savings Plan**

**Sec. 1.** As used in this chapter, "account" means a long term care savings account established under section 21(e) of this chapter.

**Sec. 2.** As used in this chapter, "board" refers to the board of directors of the plan established by section 13 of this chapter.

**Sec. 3.** As used in this chapter, "eligible long term care expense"

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means:

(1) an expense paid by a participant for long term care provided to the participant; or

(2) a premium paid by a participant who is at least fifty (50) years of age for a qualified long term care policy for the participant.

Sec. 4. As used in this chapter, "financial institution" has the meaning set forth in IC 5-13-4-10.

Sec. 5. As used in this chapter, "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.

Sec. 6. As used in this chapter, "long term care" has the meaning set forth in IC 12-15-39.6-1.

Sec. 7. As used in this chapter, "participant" means an individual who is participating in the plan.

Sec. 8. As used in this chapter, "plan" refers to the Indiana long term care savings plan established by section 12(a) of this chapter.

Sec. 9. As used in this chapter, "qualified long term care policy" has the meaning set forth IC 12-15-39.6-5.

Sec. 10. As used in this chapter, "taxable year" has the meaning set forth in IC 6-3-1-16.

Sec. 11. As used in this chapter, "trust" refers to the Indiana long term care savings plan trust established by section 21(a) of this chapter.

Sec. 12. (a) The Indiana long term care savings plan is created for the purpose of funding by a participant on a tax-favored basis an account to pay eligible long term care expenses of the participant.

(b) The board may:

(1) administer the plan;

(2) enter into agreements with one (1) or more financial institutions to receive contributions in the form of account deposits; or

(3) both.

Sec. 13. (a) The board of directors of the plan is established. The board consists of the following:

(1) The following serve as ex officio members or directors:

(A) The treasurer of state.

(B) The commissioner of the department of insurance.

(2) Three (3) members or directors appointed by the governor as follows:

(A) One (1) member or director must be a representative of the long term care planning industry.

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1 (B) One (1) member or director must be a financial  
2 planning professional.

3 (b) During a member's term of service on the board, an  
4 appointed member of the board may not be an official or employee  
5 of the state.

6 (c) Not more than two (2) of the appointed members of the  
7 board may belong to the same political party.

8 (d) An appointed member serves a four (4) year term. An  
9 appointed member shall hold over after the expiration of the  
10 member's term until the member's successor is appointed and  
11 qualified.

12 (e) The governor may reappoint an appointed member of the  
13 board.

14 (f) A vacancy shall be filled for the balance of an unexpired term  
15 in the same manner as the original appointment.

16 (g) The treasurer of state shall serve as the chairperson of the  
17 board. The commissioner of insurance shall serve as the  
18 vice-chairperson. The board annually may elect any other officer  
19 that the board desires.

20 (h) The governor may remove an appointed member for  
21 misfeasance, malfeasance, willful neglect of duty, or other cause  
22 after notice and a public hearing, unless the member expressly  
23 waives the notice and hearing in writing.

24 (i) An ex officio member of the board may designate a person to  
25 serve as an ex officio member of the board in the absence of the ex  
26 officio member.

27 Sec. 14. (a) An appointed member of the board is not entitled to  
28 the minimum salary per diem provided by IC 4-10-11-2.1(b).  
29 However, each appointed member is entitled to reimbursement for  
30 traveling expenses and other reasonable expenses actually incurred  
31 in connection with the member's duties.

32 (b) An ex officio member of the board is entitled to  
33 reimbursement for traveling expenses and other reasonable  
34 expenses actually incurred in connection with the member's duties.

35 Sec. 15. (a) Three (3) members of the board are a quorum for  
36 the transaction of business at a meeting of the board.

37 (b) This subsection applies to a meeting of the board at which at  
38 least three (3) members of the board are physically present at the  
39 place where the meeting is conducted. A member of the board may  
40 participate in a meeting of the board by using a means of  
41 communication that permits:

42 (1) the member;

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(2) all other members participating in the meeting; and  
 (3) all members of the public physically present at the place where the meeting is conducted;  
 to simultaneously communicate with each other during the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.

(c) The affirmative vote of a majority of all members of the board who are present is necessary for the board to take action.

(d) The board shall meet at the call of the chairperson and at other times as the board by rule may provide.

(e) Meetings of the board may be held anywhere in Indiana.

(f) A manager or another person designated by resolution of the board:

(1) shall keep a record of the meetings of the board; and

(2) shall be custodian of:

(A) all books, documents, and papers filed with the board; and

(B) the minute book or journal of the board.

Sec. 16. (a) The board has all powers necessary or convenient to carry out the purposes and objectives of this chapter, and the powers delegated by law or executive orders, including the following powers:

(1) To develop and implement the plan, and other services consistent with the purposes and objectives of this chapter, through:

(A) rules or emergency rules adopted under IC 4-22-2; or

(B) guidelines, procedures, or policies established by the board.

(2) To select and enter into agreements with one (1) or more financial institutions to receive contributions in the form of account deposits.

(3) To select and retain professional services, including the following:

(A) Financial advisers and managers.

(B) Custodians and other fiduciaries.

(C) Investment advisers and managers.

(D) Accountants and auditors.

(E) Consultants or other experts.

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(F) Actuarial services providers.

(G) Attorneys.

(4) To establish minimum account deposit amounts (both initial and periodic).

(5) To establish investment guidelines, objectives, and performance standards for assets held by the trust in the manner provided by IC 30-4-3-3.

(6) To employ persons, if the board chooses, and as are necessary, including a manager who is not a member of the board, and to fix the terms of their employment.

(7) To recommend legislation to the governor and the general assembly.

(8) To adopt rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the long term care savings plan and services.

(9) To interpret this chapter broadly, in rules, policies, guidelines, and procedures, in light of the purposes and objectives of this chapter.

(10) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under the plan.

(11) To approve a fee, commission, or expense that directly or indirectly affects the return on investment of the assets of the trust.

(b) The board shall prepare an annual report for the plan and promptly transmit the annual report to the governor and the general assembly. The board shall make available, upon request, copies of the annual report to participants and the public, and shall post the annual report, or a link to the annual report, on the web page of the treasurer of state. A report transmitted under this section to the general assembly must be in an electronic format under IC 5-14-6.

(c) Before the implementation of the trust established by section 21 of this chapter:

(1) the board chairperson;

(2) the board vice-chairperson;

(3) the manager; and

(4) any officer or employee of the board who is authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond must be conditioned upon the faithful performance of the duties of the office of the

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principal and shall be executed by a surety company authorized to transact business in Indiana. The board shall pay the cost of the bonds.

**Sec. 17. (a) The board may accept gifts, bequest, donations, and devises of personal and real property:**

(1) as trustees for the maintenance, use, or benefit of the plan or the trust; or

(2) to be administered for other public or charitable purposes for the benefit or use of participants.

**(b) The board may receive, accept, hold, administer, and use any property transferred to the board by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed of the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the board, the plan, the trust, or the participants, as applicable.**

**(c) The board may, if not inconsistent with the terms and conditions of a gift of real property:**

(1) sell, convey, or otherwise dispose of the real property; and

(2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the board, the plan, the trust, and the participants.

**(d) When acting under the powers granted by this chapter, members of the board serve as trustees of a private trust, subject to:**

(1) the terms and conditions of:

(A) the plan; or

(B) the gift, bequest, donation, or devise; and

(2) the law applicable to private trusts.

**Sec. 18. The board shall do the following:**

(1) Provide each member, officer, employee, consultant, counsel, and agent of the board a defense in a suit arising out of the performance of duties for or on behalf of the board or the plan, if the board determines that the duties were performed in good faith.

(2) Save a person described in subdivision (1) harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the board or the plan, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of the bad faith of the person, or is based on the person's malfeasance in the performance of duties.

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1        **Sec. 19. (a) After December 31, 2009, an individual may**  
 2 **participate in the plan by:**

- 3        (1) entering into a participation agreement with the board, if  
 4        the board administers the plan; or  
 5        (2) making contributions to an account at a financial  
 6        institution with which the board has an agreement under  
 7        section 12(b) of this chapter.

8        (b) A participant may make contributions to the plan  
 9        established under section 12(a) of this chapter. However, a  
 10       participant may not contribute more than one hundred sixty-five  
 11       thousand dollars (\$165,000) to the plan during the participant's  
 12       lifetime. The dollar amount of the maximum lifetime contribution  
 13       must be adjusted annually for inflation in accordance with Section  
 14       151 of the Internal Revenue Code.

15       (c) A participation agreement must provide the following:

- 16       (1) That the agreement may be:  
 17              (A) canceled by a participant; or  
 18              (B) transferred to a participant's spouse:  
 19              upon the terms and conditions set by the board.  
 20       (2) That a participant is the owner of contributions made to  
 21       the plan, plus credited earnings on the contributions, unless  
 22       the participant transfers the agreement.  
 23       (3) That if:  
 24              (A) a participant cancels the agreement; or  
 25              (B) the plan established by section 12(a) of this chapter is  
 26              terminated;  
 27       a participant is entitled to receive the amount of the  
 28       participant's contributions to the plan plus credited earnings  
 29       on the participant's contributions. A participant may not  
 30       receive more than the fair market value of the participant's  
 31       account on the date the participant's account is liquidated.

32       **Sec. 20. IC 6-3-2-22 governs state income tax treatment of**  
 33 **contributions to, investment earnings or interest on, withdrawals**  
 34 **from, and distributions from the plan established under this**  
 35 **chapter.**

36       **Sec 21. (a) The Indiana long term care savings plan trust is**  
 37 **established, separate and distinct from all other entities, and shall**  
 38 **be maintained for the purposes of providing a source of money to**  
 39 **pay:**

- 40       (1) a participant's eligible long term care expenses; and  
 41       (2) the costs of administering the plan.  
 42       (b) The board is the trustee of the trust and is responsible for

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the administration, operation, and maintenance of the trust.

(c) The trust consists of the following:

(1) Each participant's contributions to the plan.

(2) All earnings on investments or deposits of the plan.

(3) All gifts, grants, devises, or bequests in money, property, or another form made to the plan.

(4) All contributions or payments to the plan made in a manner provided by the general assembly.

(d) The administrative costs of the plan, including the surety bond required by section 16(c) of this chapter, shall be paid from the earnings of the trust before the earnings are credited to participants' accounts.

(e) The board shall establish an account for each participant. Each participant's account shall be credited with:

(1) the contributions made to the plan by the participant; and

(2) after the costs described in subsection (d), the earnings attributable to the balance of the account.

Sec. 22. (a) The board has all powers necessary to carry out the purposes, objectives, and provisions of the trust established by section 21(a) of this chapter, including the powers provided under IC 30-4 for trustees of a private trust.

(b) The board has the fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets, including the costs of administration, operation, and maintenance of the trust, in the manner provided by IC 30-4 for trustees of a private trust.

Sec. 23. The board may adopt rules under IC 4-22-2 that it considers appropriate or necessary to implement this chapter.

Sec. 24. This chapter may not be construed as an obligation of the state to assume any responsibility for the Indiana long term care savings plan.

SECTION 3. [EFFECTIVE JULY 1, 2009] IC 6-3-2-22, as added by this act, applies to taxable years beginning after December 31, 2009.

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## COMMITTEE REPORT

Mr. Speaker: Your Committee on Ways and Means, to which was referred House Bill 1448, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17.

Delete page 2.

Page 3, delete lines 1 through 40.

Page 5, delete lines 6 through 42, begin a new paragraph and insert:  
"SECTION 1. IC 6-8-13 IS ADDED TO THE INDIANA CODE AS  
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY  
1, 2009]:

**Chapter 13. Indiana Long Term Care Savings Plan**

**Sec. 1. As used in this chapter, "eligible long term care expense" means:**

- (1) an expense paid by a participant for long term care provided to the participant; or
- (2) a premium paid by a participant who is at least fifty (50) years of age for a qualified long term care policy for the participant.

**Sec. 2. As used in this chapter, "financial institution" has the meaning set forth in IC 5-13-4-10.**

**Sec. 3. As used in this chapter, "Internal Revenue Code" has the meaning set forth in IC 6-3-1-11.**

**Sec. 4. As used in this chapter, "long term care" has the meaning set forth in IC 12-15-39.6-1.**

**Sec. 5. As used in this chapter, "participant" means an individual who is participating in the plan.**

**Sec. 6. As used in this chapter, "plan" refers to the Indiana long term care savings plan established by section 9(a) of this chapter.**

**Sec. 7. As used in this chapter, "qualified long term care policy" has the meaning set forth IC 12-15-39.6-5.**

**Sec. 8. As used in this chapter, "taxable year" has the meaning set forth in IC 6-3-1-16.**

**Sec. 9. (a) The Indiana long term care savings plan is created for the purpose of funding by a participant on a tax-favored basis an account to pay eligible long term care expenses of the participant.**

**(b) The department of financial institutions shall enter into agreements with one (1) or more financial institutions to receive contributions in the form of account deposits.**

**Sec. 10. (a) After December 31, 2009, an individual may participate in the plan by making contributions to an account at a**

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financial institution with which the department of financial institutions has an agreement under section 9(b) of this chapter.

(b) A participant may make contributions under the plan to an account with a financial institution with which the department of financial institutions has an agreement under section 9(b) of this chapter. However, a participant may not contribute more than one hundred sixty-five thousand dollars (\$165,000) to the plan during the participant's lifetime. The dollar amount of the maximum lifetime contribution must be adjusted annually for inflation in accordance with Section 151 of the Internal Revenue Code.

(c) A participation agreement must provide the following:

(1) That the agreement may be:

(A) canceled by a participant; or

(B) transferred to a participant's spouse:

upon the terms and conditions set by the department of financial institutions.

(2) That a participant is the owner of contributions made to the plan, plus credited earnings on the contributions, unless the participant transfers the agreement.

(3) That if:

(A) a participant cancels the agreement; or

(B) the plan established by section 9(a) of this chapter is terminated;

a participant is entitled to receive the amount of the participant's contributions to the plan plus credited earnings on the participant's contributions. A participant may not receive more than the fair market value of the participant's account on the date the participant's account is liquidated.

Sec. 11. IC 6-3-2-22 governs state income tax treatment of contributions to, investment earnings or interest on, withdrawals from, and distributions from the plan established under this chapter.

Sec. 12. The department of financial institutions may adopt rules under IC 4-22-2 that it considers appropriate or necessary to implement this chapter.

Sec. 13. This chapter may not be construed as an obligation of the state to assume any responsibility for the Indiana long term care savings plan."

Delete pages 6 through 7.

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Page 8, delete lines 1 through 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1448 as introduced.)

CRAWFORD, Chair

Committee Vote: yeas 18, nays 0.

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### HOUSE MOTION

Mr. Speaker: I move that House Bill 1448 be amended to read as follows:

Page 1, line 5, delete "IC 6-8-13-15(e)." and insert "**IC 6-8-13-21(e).**".

Page 2, between lines 36 and 37, begin a new paragraph and insert:

**"Sec. 1. As used in this chapter, "account" means a long term care savings account established under section 21(e) of this chapter.**

**Sec. 2. As used in this chapter, "board" refers to the board of directors of the plan established by section 13 of this chapter."**

Page 2, line 37, delete "Sec. 1." and insert "**Sec. 3.**".

Page 3, line 2, delete "Sec. 2." and insert "**Sec. 4.**".

Page 3, line 4, delete "Sec. 3." and insert "**Sec. 5.**".

Page 3, line 6, delete "Sec. 4." and insert "**Sec. 6.**".

Page 3, line 8, delete "Sec. 5." and insert "**Sec. 7.**".

Page 3, line 10, delete "Sec. 6." and insert "**Sec. 8.**".

Page 3, line 11, after "section" delete "9(a)" and insert "**12(a)**".

Page 3, line 12, delete "Sec. 7." and insert "**Sec. 9.**".

Page 3, line 14, delete "Sec. 8." and insert "**Sec. 10.**".

Page 3, between lines 15 and 16, begin a new paragraph and insert:

**"Sec. 11. As used in this chapter, "trust" refers to the Indiana long term care savings plan trust established by section 21(a) of this chapter."**

Page 3, line 16, delete "Sec. 9." and insert "**Sec. 12.**".

Page 3, line 19, delete "department of financial institutions shall" and insert "**board may:**

**(1) administer the plan;**

**(2)".**

Page 3, line 21, after "deposits" delete "." and insert "**; or**

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**(3) both."**

Page 3, between lines 21 and 22, begin a new paragraph and insert:

**"Sec. 13. (a) The board of directors of the plan is established.**

**The board consists of the following:**

**(1) The following serve as ex officio members or directors:**

**(A) The treasurer of state.**

**(B) The commissioner of the department of insurance.**

**(2) Three (3) members or directors appointed by the governor as follows:**

**(A) One (1) member or director must be a representative of the long term care planning industry.**

**(B) One (1) member or director must be a financial planning professional.**

**(b) During a member's term of service on the board, an appointed member of the board may not be an official or employee of the state.**

**(c) Not more than two (2) of the appointed members of the board may belong to the same political party.**

**(d) An appointed member serves a four (4) year term. An appointed member shall hold over after the expiration of the member's term until the member's successor is appointed and qualified.**

**(e) The governor may reappoint an appointed member of the board.**

**(f) A vacancy shall be filled for the balance of an unexpired term in the same manner as the original appointment.**

**(g) The treasurer of state shall serve as the chairperson of the board. The commissioner of insurance shall serve as the vice-chairperson. The board annually may elect any other officer that the board desires.**

**(h) The governor may remove an appointed member for misfeasance, malfeasance, willful neglect of duty, or other cause after notice and a public hearing, unless the member expressly waives the notice and hearing in writing.**

**(i) An ex officio member of the board may designate a person to serve as an ex officio member of the board in the absence of the ex officio member.**

**Sec. 14. (a) An appointed member of the board is not entitled to the minimum salary per diem provided by IC 4-10-11-2.1(b). However, each appointed member is entitled to reimbursement for traveling expenses and other reasonable expenses actually incurred in connection with the member's duties.**

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(b) An ex officio member of the board is entitled to reimbursement for traveling expenses and other reasonable expenses actually incurred in connection with the member's duties.

**Sec. 15. (a)** Three (3) members of the board are a quorum for the transaction of business at a meeting of the board.

(b) This subsection applies to a meeting of the board at which at least three (3) members of the board are physically present at the place where the meeting is conducted. A member of the board may participate in a meeting of the board by using a means of communication that permits:

- (1) the member;
- (2) all other members participating in the meeting; and
- (3) all members of the public physically present at the place where the meeting is conducted;

to simultaneously communicate with each other during the meeting. If a meeting is held under this subsection, the memoranda of the meeting prepared under IC 5-14-1.5-4 must state the name of each member who was physically present at the place where the meeting was conducted, who participated in the meeting by using a means of communication described in this subsection, and who was absent from the meeting.

(c) The affirmative vote of a majority of all members of the board who are present is necessary for the board to take action.

(d) The board shall meet at the call of the chairperson and at other times as the board by rule may provide.

(e) Meetings of the board may be held anywhere in Indiana.

(f) A manager or another person designated by resolution of the board:

- (1) shall keep a record of the meetings of the board; and
- (2) shall be custodian of:
  - (A) all books, documents, and papers filed with the board; and
  - (B) the minute book or journal of the board.

**Sec. 16. (a)** The board has all powers necessary or convenient to carry out the purposes and objectives of this chapter, and the powers delegated by law or executive orders, including the following powers:

- (1) To develop and implement the plan, and other services consistent with the purposes and objectives of this chapter, through:
  - (A) rules or emergency rules adopted under IC 4-22-2; or
  - (B) guidelines, procedures, or policies established by the

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board.

(2) To select and enter into agreements with one (1) or more financial institutions to receive contributions in the form of account deposits.

(3) To select and retain professional services, including the following:

- (A) Financial advisers and managers.
- (B) Custodians and other fiduciaries.
- (C) Investment advisers and managers.
- (D) Accountants and auditors.
- (E) Consultants or other experts.
- (F) Actuarial services providers.
- (G) Attorneys.

(4) To establish minimum account deposit amounts (both initial and periodic).

(5) To establish investment guidelines, objectives, and performance standards for assets held by the trust in the manner provided by IC 30-4-3-3.

(6) To employ persons, if the board chooses, and as are necessary, including a manager who is not a member of the board, and to fix the terms of their employment.

(7) To recommend legislation to the governor and the general assembly.

(8) To adopt rules, bylaws, procedures, guidelines, and policies as are necessary to carry out the long term care savings plan and services.

(9) To interpret this chapter broadly, in rules, policies, guidelines, and procedures, in light of the purposes and objectives of this chapter.

(10) To charge, impose, and collect administrative fees and service charges in connection with any agreement, contract, or transaction under the plan.

(11) To approve a fee, commission, or expense that directly or indirectly affects the return on investment of the assets of the trust.

(b) The board shall prepare an annual report for the plan and promptly transmit the annual report to the governor and the general assembly. The board shall make available, upon request, copies of the annual report to participants and the public, and shall post the annual report, or a link to the annual report, on the web page of the treasurer of state. A report transmitted under this section to the general assembly must be in an electronic format

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under IC 5-14-6.

(c) Before the implementation of the trust established by section 21 of this chapter:

- (1) the board chairperson;
- (2) the board vice-chairperson;
- (3) the manager; and
- (4) any officer or employee of the board who is authorized by resolution to handle funds or sign checks;

shall execute a surety bond in the penal sum of one hundred thousand dollars (\$100,000). The surety bond must be conditioned upon the faithful performance of the duties of the office of the principal and shall be executed by a surety company authorized to transact business in Indiana. The board shall pay the cost of the bonds.

Sec. 17. (a) The board may accept gifts, bequest, donations, and devises of personal and real property:

- (1) as trustees for the maintenance, use, or benefit of the plan or the trust; or
- (2) to be administered for other public or charitable purposes for the benefit or use of participants.

(b) The board may receive, accept, hold, administer, and use any property transferred to the board by gift, bequest, donation, or devise in accordance with the terms, conditions, obligations, liabilities, and burdens imposed of the gift, bequest, donation, or devise if, in the judgment of the board, the action is in the best interest of the board, the plan, the trust, or the participants, as applicable.

(c) The board may, if not inconsistent with the terms and conditions of a gift of real property:

- (1) sell, convey, or otherwise dispose of the real property; and
- (2) invest, reinvest, or use the proceeds as, in the judgment of the board, is of the greatest benefit to the board, the plan, the trust, and the participants.

(d) When acting under the powers granted by this chapter, members of the board serve as trustees of a private trust, subject to:

- (1) the terms and conditions of:
  - (A) the plan; or
  - (B) the gift, bequest, donation, or devise; and
- (2) the law applicable to private trusts.

Sec. 18. The board shall do the following:

- (1) Provide each member, officer, employee, consultant,

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counsel, and agent of the board a defense in a suit arising out of the performance of duties for or on behalf of the board or the plan, if the board determines that the duties were performed in good faith.

(2) Save a person described in subdivision (1) harmless from any liability, cost, or damage in connection with an action arising out of the performance of duties for or on behalf of the board or the plan, including the payment of any legal fees, except where the liability, cost, or damage is predicated on, or arises out of the bad faith of the person, or is based on the person's malfeasance in the performance of duties."

Page 3, line 22, delete "Sec. 10." and insert "Sec. 19."

Page 3, line 23, after "by" insert ":

(1) entering into a participation agreement with the board, if the board administers the plan; or

(2)".

Page 3, line 24, delete "department of financial" and insert "board".

Page 3, line 25, delete "institutions".

Page 3, line 25, after "section" delete "9(b)" and insert "12(b)".

Page 3, line 26, delete "under" and insert "to".

Page 3, line 26, delete "to an" and insert "established".

Page 3, delete line 27.

Page 3, line 28, delete "financial institutions has an agreement".

Page 3, line 28 after "section" delete "9(b)" and insert "12(a)".

Page 3, line 38, delete "department of" and insert "board."

Page 3, delete line 39.

Page 4, line 3, after "section" delete "9(a)" and insert "12(a)".

Page 4, line 10, delete "Sec. 11." and insert "Sec. 20."

Page 4, between lines 13 and 14, begin a new paragraph and insert:

"Sec 21. (a) The Indiana long term care savings plan trust is established, separate and distinct from all other entities, and shall be maintained for the purposes of providing a source of money to pay:

(1) a participant's eligible long term care expenses; and

(2) the costs of administering the plan.

(b) The board is the trustee of the trust and is responsible for the administration, operation, and maintenance of the trust.

(c) The trust consists of the following:

(1) Each participant's contributions to the plan.

(2) All earnings on investments or deposits of the plan.

(3) All gifts, grants, devises, or bequests in money, property, or another form made to the plan.

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(4) All contributions or payments to the plan made in a manner provided by the general assembly.

(d) The administrative costs of the plan, including the surety bond required by section 16(c) of this chapter, shall be paid from the earnings of the trust before the earnings are credited to participants' accounts.

(e) The board shall establish an account for each participant. Each participant's account shall be credited with:

- (1) the contributions made to the plan by the participant; and
- (2) after the costs described in subsection (d), the earnings attributable to the balance of the account.

**Sec. 22. (a)** The board has all powers necessary to carry out the purposes, objectives, and provisions of the trust established by section 21(a) of this chapter, including the powers provided under IC 30-4 for trustees of a private trust.

(b) The board has the fiduciary responsibility to make all decisions regarding the investment of the money in the trust, including the selection of all investment options and the approval of all fees and other costs charged to trust assets, including the costs of administration, operation, and maintenance of the trust, in the manner provided by IC 30-4 for trustees of a private trust."

Page 4, line 14, delete "Sec. 12." and insert "**Sec. 23.**".

Page 4, line 14, delete "department of financial institutions" and insert "**board**".

Page 4, line 17, delete "Sec. 13." and insert "**Sec. 24.**".

(Reference is to HB 1448 as printed February 20, 2009.)

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